Midwest Electric Manufacturing Corporation *and* Allied Production Workers Local No. 12, International Union Allied, Novelty and Production Workers. Case 13-CA-20022

February 11, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 24, 1981, Administrative Law Judge Mary Ellen R. Benard issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief in opposition to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt her recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Midwest Electric Manufacturing Corporation, Chicago, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

Member Hunter, in adopting the Administrative Law Judge's finding that Respondent's no-solicitation rule was unlawful, finds it unnecessary to pass on her reliance on *T.R.W. Bearings Division, a Division of T.R.W., Inc.*, 257 NLRB 442 (1980), since the rule is unlawful under any view of the applicable law.

DECISION

STATEMENT OF THE CASE

MARY ELLEN R. BENARD, Administrative Law Judge: The original charge in this case was filed on June 13, 1980,[1] by Allied Production Workers Local No. 12, International Union Allied, Novelty and Production Workers, herein called the Union, against Midwest Electric Manufacturing Corporation, herein called Respondent. On July 24 the complaint issued alleging, in substance, that John Hammel, Respondent's shipping department foreman and an admitted supervisor, told employees not to attend a union meeting, interrogated employees about their union activities and sentiments, threatened employees with loss of benefits if they chose union representation, and created the impression that Respondent was engaged in surveillance of its employees' union activities, all in violation of Section 8(a)(1) of the Act. The complaint also alleges that Respondent further violated Section 8(a)(1) by promulgating a rule prohibiting employee solicitation during working hours, and that Respondent laid off or discharged employee Howard Clark because of his union and/or other protected concerted activities and thereby violated Section 8(a)(1) and (3) of the Act. Respondent filed an answer in which it denied the commission of any unfair labor practices.

A hearing was held before me in Chicago, Illinois, on February 25, 1981. Thereafter, the General Counsel and Respondent filed briefs, which have been considered.

Upon the entire record in the case and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent is an Illinois corporation with an office and place of business at Chicago, Illinois, where it is engaged in the manufacture of electrical conduit fittings. During the calendar year preceding issuance of the complaint, a representative period, Respondent, in the course and conduct of its business operations, sold and shipped from its Chicago, Illinois, facility goods valued in excess of $50,000 directly to customers located outside the State of Illinois. The answer admits and I find that Respondent is an employer engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Alleged Violations of Section 8(a)(1) of the Act*

1. Background; alleged unlawful statements and questions

The record does not establish when the Union began its campaign to organize Respondent's employees, but it is clear that the campaign was underway the first week of June. On or about June 3 Bruce Falls, a union representative, passed out literature near Respondent's plant advising employees of a union meeting to be held June 5. According to Falls, he had several conversations during the day with Shipping Department Foreman John

[1] All dates herein are 1980 unless otherwise indicated.

Hammel in which Hammel told him to leave Respondent's premises.[2]

Among the employees who received the notice of the union meeting from Falls was Howard Clark, who worked in the shipping department. According to Clark, on June 3 he returned to work from a 1-week vacation and observed Falls handing out leaflets. Clark took a leaflet and a "card" (apparently a union authorization card), filled out the card, and returned it to Falls.[3] Clark testified that that same day Hammel, in a conversation with Clark and J. C. Mayberry, leadman in the shipping department,[4] told them that if the employees organized for the Union they would lose their Christmas and other bonuses and some holiday benefits. Clark further testified that the next day Hammel told him and Mayberry that he did not want anyone from the shipping department to attend union meetings and that he heard Hammel say the same thing to shipping department employees Melvin Griffin and Kurt White during the course of the day. On the morning of June 5, according to Clark, Hammel repeated to Clark and Mayberry that he did not want anyone from his department to go to the union meeting, and further stated that he would know the names of the employees who decided to attend. That same morning, according to Clark, he, Mayberry, White, and Griffin had a conversation with Hammel in which the latter asked the employees who was planning to go to the meeting, and also asked Clark specifically if he was going to go. Clark replied that "they [the Union] wouldn't have forgotten about me."

Clark and Mayberry, among other employees, went to the union meeting the evening of June 5.[5] Clark testified that about 7:30 the next morning, before work started for the day, he and Mayberry had a conversation with Hammel in which Hammel mentioned that they, as well as employees Booker Partee, "Willie," and "Jimmy Lee,"[6] had been at the meeting.

Clark's testimony was not substantially corroborated by Mayberry, who testified that before work the morning of June 6 Hammel told him that most of the black employees were participating in the union campaign,[7] and that Hammel also said that he knew that Mayberry, Clark, Partee, and employee Leonard Wallace had gone to the union meeting the night before. Mayberry also testified that the preceding day Hammel asked him whether he was going to the meeting and that he had replied by asking Hammel if there was any reason why he should not go. Significantly, according to Mayberry the conversations which he described were between himself and Hammel; although other employees were nearby, they were not participants in these discussions and, although he observed discussions between Hammel and Clark, he did not know what they said.

Hammel denied making any of the statements or inquiries about the union meeting or other union activities attributed to him by Clark and Mayberry. Hammel further testified that he attended a meeting, apparently of supervisory personnel, called by Robert McCann, Respondent's manager of manufacturing, to discuss the organizing campaign, and that at that meeting instructions were given against interference with the employees' rights to organize. Finally, Hammel stated that he had no conversations with employees about the Union during the week at issue.

I credit Mayberry's version of conversations with Hammel during the week of the union meeting, and discredit both Clark and Hammel to the extent that their testimony is inconsistent with that of Mayberry. Mayberry, although a very reluctant witness, appeared to be a truthful one, and to testify to the best of his recollection. Further, Mayberry remained an employee of Respondent as of the date of the hearing and has no direct stake in the outcome of this case, while both Clark and Hammel do.[8] Clark's testimony as to comments allegedly made by Hammel in the presence of both Mayberry and Clark and sometimes of other employees was not substantiated by Mayberry, and none of the other employees who allegedly heard any of these remarks were called to testify. Further, Clark tended to exaggerate or shade his testimony to support his position, and his allegations about threats by Hammel did not have the ring of truth. Hammel, on the other hand, appeared to be basically truthful as a witness, but his statements that he never asked any employees about the union meeting, or indeed talked about the Union at all, did not strike me as truthful.[9] Accordingly, I find Mayberry's account of these conversations to be the most accurate one and conclude that on June 5 Hammel asked Mayberry whether he was going to the meeting planned for that night and that the next day Hammel repeated to Mayberry the names of employees who had gone to the meeting. I further find that Hammel's statement to Mayberry as to who attended the union meeting created the impression of surveil-

[2] Falls testified that after being told to leave Respondent's parking lot he stationed himself in an adjoining alley, but was then told that Respondent owned the alley. Documentary evidence establishes and I find that Respondent purchased the alley from the City of Chicago in 1979 and, thus, that the alley is company property.

[3] Clark filled out the card and gave it back to Falls in front of the employees' entrance to the plant. There is no evidence as to whether any member of management observed Clark sign the card.

[4] The parties stipulated at the hearing that Mayberry is an employee within the meaning of the Act.

[5] Clark testified that Booker Partee, Jimmy Johnston, Leonard Wallace, and "Willie" and "Steve," whose last names Clark could not remember, had also attended the meeting.

[6] The record does not show whether Jimmy Lee and Jimmy Johnston are the same person.

[7] Clark, Mayberry, and Hammel are black.

[8] In so stating, I am cognizant of the fact that Mayberry is a friend of both Clark's and Hammel's and felt extremely uncomfortable about testifying. Notwithstanding, I received the impression that Mayberry was not attempting to tailor his testimony to cause as little offense to either side as possible, but testified to events as he remembered them. I also note that Mayberry testified after Clark and before Hammel, but was not in the hearing room during Clark's testimony and thus was unaware of whether either of the other witnesses' testimony would be consistent with his.

[9] In so finding, I note that it is undisputed that on Sunday, June 8, Mayberry and employee James Williams visited Hammel at his home and that when Mayberry brought up the subject of the Union Hammel stated that he was "definitely against unions at that time." Given Hammel's opposition to unionization, I do not think it likely that he would have avoided the subject entirely at work during the preceding week.

lance of employees' union activity[10] and therefore violated Section 8(a)(1) of the Act.[11]

I further find that Hammel's question of Mayberry on June 5 as to whether he was going to the union meeting was unlawful. Hammel did not articulate any legitimate reason for his interrogation, nor did he provide any assurances that Mayberry or other employees would suffer no reprisals for their union activity. In these circumstances, and particularly in light of the impression of surveillance created by Hammel's other comments to Mayberry about the union meeting the next day, I conclude that Hammel's questions to Mayberry about his union activity was coercive and therefore violated Section 8(a)(1) of the Act.[12]

2. Respondent's no-solicitation rule

It is undisputed that on June 6 Respondent posted a memo to employees from McCann which read:

> The company has a firm policy against soliciation [sic] in working areas during working hours. Anyone violating this rule will be subject to discharge.[13]

It is also essentially undisputed that at the time the notice was posted a supervisor[14] told the shipping department employees that no soliciting would be permitted.

In its recent decision in *T.R.W. Bearings Division, a Division of T.R.W., Inc.*, 257 NLRB 442 (1981), the Board held that rules prohibiting employee solicitation during either "working time" or "working hours" are presumptively invalid. In so concluding, the Board found that both terms are ambiguous and,

> [i]nasmuch as employees may rightfully engage in organizational activities during breaktime and mealtime, rules which restrain, or which, because of their ambiguity, tend to restrain employees from engaging in such activity constitute unlawful restrictions against and interference with the exercise by employees of the self-organizational rights guaranteed them by Section 7 of the Act.[15]

Accordingly, I find that Respondent's no-solicitation rule, as posted and as orally communicated to employees, was presumptively invalid, and that Respondent has not rebutted that presumption. I therefore conclude that by promulgating an overly broad no-solicitation rule Respondent violated Section 8(a)(1) of the Act.[16]

B. *The Layoff of Howard Clark*

1. Clark's employment history with Respondent

Clark was first employed by Respondent in the shipping department under the supervision of Foreman John Hammel in January 1974. Clark quit to go back to school in August 1977 but returned to work for Respondent, again in the shipping department and under Hammel's supervision, in May 1979.[17]

Clark testified that when he was rehired in May 1979 Hammel told him that he was being hired as an "old employee" and that consequently he was entitled to his previous wage rate and his previously accrued seniority. However, Hammel credibly testified that, although he offered Clark an increase in salary when he was rehired, the issue of seniority was not raised, and Clark was never told he would have his former seniority. Hammel's testimony on this issue had the ring of truth, and, although I have found above that he was not credible on all matters, "nothing is more common in all kinds of judicial decisions than to believe some and not all," of a witness's testimony. *N.L.R.B.* v. *Universal Camera Corporation*, 179 F.2d 749, 754 (2d Cir. 1950). Accordingly, I find that Clark was not told that he would be hired with his previously accrued seniority.

It is undisputed that Clark was a satisfactory employee. In May, Mayberry was told by Hammel and Mike Popov, Respondent's warehouse manager, that he would be taking on more of Hammel's responsibilities. Mayberry credibly testified that he said that he would therefore need more help with his own work and that he and Hammel agreed that Clark should be selected for the additional work. Mayberry also credibly testified that he told Hammel and Popov that in that case Clark should receive a wage increase and the management officials agreed that "they would see what they could do."

---

[10] The complaint specifically alleges the impression of surveillance on or about June 5. There was no contention at the hearing or in the General Counsel's brief that Hammel's alleged observation of Falls as he handed out literature earlier in the week also created an impression of surveillance and I therefore make no finding in this regard.

[11] *Erie Technological Products, Inc.*, 218 NLRB 878, 886 (1975). See *Engineered Apparel, Incorporated*, 243 NLRB 66, 67 (1979).

[12] *Franklin Property Company, Inc., d/b/a The Hilton Inn*, 232 NLRB 873, 875-876 (1977); *The Stride Rite Corporation*, 228 NLRB 224, 230 (1977).

[13] The complaint alleges that the notice was posted on June 5. In her brief the General Counsel moved to amend the complaint to allege that the posting occurred on June 6. Respondent has not opposed the motion and, as the record establishes that the June 6 date is correct, the motion is granted.

[14] Clark credibly testified that Hammel called the shipping department employees together and told them there would be no soliciting on the premises at any time but did not testify regarding the notice. Mayberry credibly testified that at the time the notice was posted a supervisor (whom Mayberry did not identify) told the employees that there would be no soliciting. Respondent's witnesses were not asked about either the notice or what was said when it was posted.

[15] *Id.* at 443.

[16] I note that even under the doctrine enunciated in *Essex International, Inc.*, 211 NLRB 749 (1974), which was in effect at the time of the hearing but which was overruled in *T.R.W. Bearings Division, supra*, Respondent's rule was overly broad and thus presumptively unlawful.

[17] There is some dispute as to events leading up to Clark's rehire; Clark testified that he visited the plant a number of times and that on several occasions Hammel asked him if he was ready to return to work for Respondent, while Mayberry testified that "a couple of times" Hammel had told him that he would like to have Clark come back to work. According to Hammel, however, prior to rehiring Clark in 1979 he talked with Mayberry, who told Hammel that Clark wanted to return to work for Respondent. Hammel further testified that he then talked to Clark about coming back to work and asked him what he was earning and then offered him a little bit more. I credit Mayberry and find that, although Hammel indicated that Clark was a good employee who he would like to have working for Respondent, Hammel did not repeatedly ask Clark to return.

Clark testified that he was rehired May 20, 1979, while the seniority list prepared by Respondent and in evidence as a General Counsel exhibit dates his seniority from May 7, 1979. The discrepancy is of no significance in this case.

On the evening of June 5, Clark attended the union meeting. The next day Hammel laid off Clark and employee Kurt White, telling them they were laid off for lack of work.

2. Respondent's economic situation and layoff policy

The General Counsel contends that Clark was selected for layoff because of his attendance at the union meeting the previous night. Respondent, however, contends that business conditions required that it lay off several employees and that Clark was selected in accordance with Respondent's predetermined guidelines.

In support of this contention, McCann credibly testified that Respondent's business, which is dependent to some extent on housing and other building construction starts, started to decline around Thanksgiving 1979 and that by January, management decided that a reduction in the work force would be required and that Respondent would attempt to achieve this reduction by not replacing employees who left. During the first 3 months of 1980, about a dozen employees left Respondent's employ but, because not as many employees quit as McCann had hoped, management concluded that layoffs would be necessary. Accordingly, Respondent laid off 18 employees on May 21, 7 employees on May 30, and 5 on June 6.

McCann further testified that Respondent had not had any layoffs during the 4 years that he had been manufacturing manager and consequently, after consulting in January with other management officials who were familiar with Respondent's past practice with respect to layoffs, he prepared a document, entitled "Layoff Policy—Hourly Employees," which set forth Respondent's policy for determining which employees would be laid off in the event of a reduction in the work force.[18] According to this document, in the event of an indefinite layoff the manager of manufacturing is to determine which job classifications will be affected by department and shift; employees with the least seniority in that classification are to be the first scheduled for layoff.[19] The "Layoff Policy" further provides that in the event of a temporary layoff employees are to be laid off without regard to their seniority as their work is completed, that they shall be told of the expected duration of the layoff, and, if the layoff is to be for a longer period of time than anticipated, the employees will be recalled "as soon as practical" and a further layoff made.

With respect to Clark's seniority *vis-a-vis* other shipping department employees, the record shows that as of May there were two employees junior to him:[20] K. White, whose seniority dated from January 21, and D. Carter, with a seniority date of January 25. Carter was laid off on May 30 and White was laid off at the same time as Clark.

The General Counsel correctly notes in her brief that, although Respondent argues that seniority was the dispositive factor in selecting employees for layoff, in fact a number of employees who were laid off on May 21 were senior to other employees who were laid off later or not at all. However, it appears from the record that the May 21 layoff was a temporary one and, consequently, according to Respondent's "Layoff Policy," seniority was not dispositive in determining which employees would be laid off. Thus, General Counsel's Exhibit 4, a seniority list prepared prior to the layoffs by Betty Vasquez, the secretary to the plant superintendent, and on which she later made notations reflecting the date when various employees were laid off, has an asterisk beside the layoff date of May 21, and at the bottom of the first page notes that the layoff on that date was temporary. The General Counsel does not specifically contend that this layoff was not temporary, and it is undisputed that most of the employees laid off on that date were recalled prior to the June 6 layoff. Accordingly, I conclude that the May 21 layoff was a temporary one and that Respondent's failure to follow seniority in determining which employees would be laid off was therefore not inconsistent with its stated policy.

With respect to the May 30 and June 6 layoff, examination of the seniority list and the list of employees laid off establishes that the employees selected were the most junior in their classifications and shift.

3. Analysis and conclusions

In *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), the Board discussed at some length the issues posed by what it termed "pretext" or "dual motive" cases; i.e., cases in which the General Counsel contends that the asserted legitimate reason advanced by an employer for its allegedly discriminatory action is either completely false or that, in any event, part of the reason for the action was the employee's union or other protected concerted activity and thus the action is unlawful. In the latter, dual motive case, the employer has two reasons for its action against an employee, one based on legitimate business considerations and the other based on the employee's protected activity. In *Wright Line, supra*, the Board concluded that in these circumstances the following test is to be used:

> First, we shall require that the General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. Once this is established, the burden will shift to the employer to establish that the same action would have taken place even in the absence of protected conduct. [251 NLRB at 1089.]

[18] The General Counsel contends that this document is suspect because it is undated, is not part of any group of "policy and procedure" memoranda, and was given only to Plant Manager Chester Wycykal, who was not called as a witness and thus did not corroborate McCann's testimony as to when the memorandum was prepared. However, I find McCann to be a credible witness who appeared to testify honestly and in a straightforward manner and to the best of his recollection. I therefore credit his testimony as to when the memorandum was prepared.

[19] The "Layoff Policy" also specifies that an employee may be reassigned into a lower job classification only if he has previously qualified in that classification or in a classification which contains the lower classification's job duties, and that a reassigned employee may displace only employees with less seniority on the same shift.

[20] As noted above, I find that when Clark quit in 1977 he lost his seniority and thus his seniority dated from May 1979, when he was rehired.

The General Counsel contends that a *prima facie* showing has been made that Clark's union activity was a motivating factor in his discharge and that Respondent has not met its burden of showing that Clark would have been laid off even if he had not engaged in such activity. Considering that Clark attended the June 5 union meeting, that Hammel indicated the next day to Mayberry that he was aware of Clark's attendance, the violations of Section 8(a)(1) which I have found above, and the undisputed fact that Respondent considered Clark to be a valuable employee, I conclude that it is at least arguable that the General Counsel has made a *prima facie* showing that a motivating factor in the decision to lay off Clark was his union activity. However, I further conclude that Respondent had met its burden of showing that it would have laid Clark off even if he had not engaged in protected conduct.

As discussed above, the record establishes that Respondent in fact followed its "Layoff Policy" in implementing the May 30 and June 6 layoffs, and that the May 21 layoff was a temporary one in which seniority was not dispositive in deciding which employees would be retained. The General counsel contends, however, that Respondent did not always follow seniority and that the decision the month before Clark was laid off to ask him to take over more of Mayberry's work is further indication that Clark was an unlikely candidate for layoff.

With respect to the issue of whether Respondent in fact followed seniority in deciding which employees should be laid off, the discussion above disposes of the General Counsel's contentions regarding the May 21 layoff and, as also noted above, the record establishes that Respondent did follow seniority with respect to the May 30 and June 6 layoffs. The General Counsel further contends that in a previous layoff an employee named Lloyd Ashford, who was senior to Mayberry and in his classification, was laid off while Mayberry was not. However, it is not clear that Ashford was in fact the more senior employee; Hammel testified that he thought Mayberry had more seniority, and Mayberry testified that he thought Ashford began working for the company about 4 months before he did. Both witnesses seemed unsure of their testimony in this regard and in these circumstances I conclude that the evidence is insufficient to make a finding as to whether Ashford or Mayberry was the more senior employee at the time Ashford was laid off.

As to the General Counsel's arguments as to Clark's value as an employee, while the evidence establishes that Clark was highly regarded by his supervisors, it is not for me to say that this factor must override seniority considerations in an employer's decisions as to how to implement a layoff. Certainly, Respondent could have chosen to take into account such considerations as an employee's ability, reliability, and so on in determining which employees should be laid off and which retained. However, it appears from the credible evidence that Respondent did not choose to do so, but instead decided that seniority would be the paramount consideration,[21] and it cannot be said that Respondent's decision in this regard is so unreasonable as to give rise to an inference of unlawful motivation.[22]

In view of all of the foregoing I conclude that Respondent has met its burden of showing that it would have laid off Clark even if he had not attended the union meeting. In reaching this conclusion I rely on the facts that: (1) there is no evidence that the decision to implement a layoff was not economically motivated;[23] (2) with respect to the May 30 and June 6 layoffs, Respondent followed the policies set forth in the memorandum prepared by McCann; (3) although Respondent did not lay off employees by seniority in the May 21 layoff, it appears from the record that that layoff was a temporary one in which seniority was not the paramount consideration in determining which employees would be retained; (4) Clark was one of the two most junior employees in the shipping department's first shift at the time of his layoff, and the one employee junior to him was laid off at the same time as Clark; and (5) there is no evidence that any employee junior to Clark was recalled before he was.[24] I also take into account the limited nature of Clark's union activity;[25] the fact that no other employee who attended that meeting is alleged to have been unlawfully selected for layoff; and that I have discredited Clark's testimony that he was told when he returned to work for Respondent in 1979 that he would preserve his previously accrued seniority. In light of all the foregoing, I conclude that the preponderance of the credible evidence does not establish that Clark's layoff violated Section 8(a)(1) and (3) of the Act, and I shall therefore

---

[21] McCann credibly testified that Respondent does not lay off employees as a discipline measure and that while ability is considered in determining which employees to recall, seniority is paramount in determining which ones will be laid off.

Clark testified that on the morning of June 5 he asked Hammel about the raise which had been mentioned during the May discussion of his assumption of some of Mayberry's responsibilities, and Hammel said he would check into the matter. About 15 minutes later, according to Clark, Hammel told him that "everything had been taken care of." The General Counsel argues that this incident provides further support for her contention that Clark was "a particularly unlikely candidate for layoffs"; however, Clark's raise, like the other evidence that Clark was a valuable employee, supports an inference that Clark's union activity was a factor in the decision to lay him off only in the event that I find that Respondent based its decision as to which employees should be laid off on June 6 on other factors as well as seniority. As discussed above, the record does not support such a finding.

[22] See *Uniworld General, Inc., d/b/a Circle Import Export Company/Kelvin Internationale*, 244 NLRB 255, 261 (1979).

[23] The General Counsel contends that there is no evidence of the business necessity for laying off any employees in the shipping department on June 6. I disagree. The record establishes that Respondent's volume of business had undergone a marked decline, and that Respondent has demonstrated business justification for a layoff. With respect to the reasons for laying off employees specifically in the shipping department, McCann credibly testified that, while there is no precise ratio between the number of production employees and the number of what he termed "indirect labor" employees (such as shipping department, warehouse, and administrative employees), once a production level is established and the number of production employees needed to maintain that level is determined, management then decides how much indirect labor can be retained and still maintain the desired profit margin.

[24] It is undisputed that on August 14 Clark was recalled by Respondent but that he declined to return because he had moved from the area.

[25] There is no contention that Clark engaged in any activity other than signing an authorization card and attending one union meeting, or that he so much as voiced any support for the Union.

recommend that this allegation of the complaint be dismissed.

Upon the basis of the above findings of fact and the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Midwest Electric Manufacturing Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Allied Production Workers Local No. 12, International Union Allied, Novelty and Production Workers, is a labor organization within the meaning of Section 2(5) of the Act.

3. By promulgating and maintaining an overly broad no-solicitation rule, interrogating employees about their union activity, and creating the impression of surveillance of employees' union activity, Respondent has engaged in unfair labor practices within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

4. A preponderance of the credible evidence does not establish that Respondent has otherwise violated the Act.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[26]

The Respondent, Midwest Electric Manufacturing Corporation, Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promulgating and maintaining an unlawful no-solicitation rule.

(b) Interrogating employees about their union activities.

(c) Creating the impression of surveillance of employees' union activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to engage in or refrain from engaging in any or all of the activities specified in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its Chicago, Illinois, facility copies of the attached notice marked "Appendix."[27] Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint allegations not specifically found herein be, and they hereby are, dismissed.

[26] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[27] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT promulgate or maintain any rule that does not clearly permit employees to solicit or engage in other protected activity under Section 7 of the National Labor Relations Act during break periods, meal periods, and other times when employees are not required to be working.

WE WILL NOT interrogate employees about their union or other protected activities.

WE WILL NOT create the impression of surveillance of employees' union or other protected activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

MIDWEST ELECTRIC MANUFACTURING CORPORATION